

107TH CONGRESS  
2D SESSION

# S. 3113

To amend the Internal Revenue Code of 1986 to provide additional choice regarding unused health benefits in cafeteria plans and flexible spending arrangements.

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IN THE SENATE OF THE UNITED STATES

OCTOBER 15, 2002

Mr. ENSIGN introduced the following bill; which was read twice and referred to the Committee on Finance

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## A BILL

To amend the Internal Revenue Code of 1986 to provide additional choice regarding unused health benefits in cafeteria plans and flexible spending arrangements.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. DISPOSITION OF UNUSED HEALTH BENEFITS**  
4 **IN CAFETERIA PLANS AND FLEXIBLE SPEND-**  
5 **ING ARRANGEMENTS.**

6 (a) IN GENERAL.—Section 125 of the Internal Rev-  
7 enue Code of 1986 (relating to cafeteria plans) is amended  
8 by redesignating subsections (h) and (i) as subsections (i)

1 and (j), respectively, and by inserting after subsection (g)  
 2 the following:

3 “(h) CARRYFORWARDS OR PAYMENTS OF CERTAIN  
 4 UNUSED HEALTH BENEFITS.—

5 “(1) IN GENERAL.—For purposes of this title,  
 6 a plan or other arrangement shall not fail to be  
 7 treated as a cafeteria plan solely because qualified  
 8 benefits under such plan include a health flexible  
 9 spending arrangement under which not more than  
 10 \$500 of unused health benefits may be—

11 “(A) carried forward to the succeeding  
 12 plan year of such health flexible spending ar-  
 13 rangement, or

14 “(B) paid to or on behalf of an employee  
 15 as compensation as of the end of such plan year  
 16 or upon the termination of, or failure to re-en-  
 17 roll in, such plan or arrangement.

18 “(2) DISTRIBUTION OF UNUSED HEALTH BENE-  
 19 FITS ON BEHALF OF EMPLOYEE.—For purposes of  
 20 paragraph (1)(B), unused health benefits paid as  
 21 compensation on behalf of an employee by the em-  
 22 ployer shall be—

23 “(A) includible in gross income and wages  
 24 of the employee, whether or not a deduction for

1           such payment is allowable under this title to the  
2           employee, and

3           “(B) excludable from—

4                   “(i) gross income to the extent pro-  
5                   vided under section 402(e), 457(a) (with  
6                   respect to contributions to an eligible de-  
7                   ferred compensation plan (as defined in  
8                   section 457(b)) of an eligible employer de-  
9                   scribed in section 457(e)(1)(A)), or 220,  
10                  and

11                   “(ii) wages to the extent otherwise  
12                   provided for amounts so excludable.

13           “(3) HEALTH FLEXIBLE SPENDING ARRANGE-  
14           MENT.—For purposes of this subsection, the term  
15           ‘health flexible spending arrangement’ means a flexi-  
16           ble spending arrangement (as defined in section  
17           106(c)) that is a qualified benefit and only permits  
18           reimbursement for expenses for medical care (as de-  
19           fined in section 213(d)(1) (without regard to sub-  
20           paragraphs (C) and (D) thereof)).

21           “(4) UNUSED HEALTH BENEFITS.—For pur-  
22           poses of this subsection, the term ‘unused health  
23           benefits’ means the excess of—

1           “(A) the maximum amount of reimburse-  
2           ment allowable during a plan year under a  
3           health flexible spending arrangement, over

4           “(B) the actual amount of reimbursement  
5           during such year under such arrangement.”.

6           (b) EFFECTIVE DATE.—The amendment made by  
7           subsection (a) shall apply to taxable years beginning after  
8           December 31, 2003.

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